



[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. FAA-2006-26661; Amdt. No. 61-129]

RIN 2120-AI86

Pilot, Flight Instructor, and Pilot School Certification; Technical Amendment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The FAA is correcting a final rule published on August 21, 2009 (74 FR 42500).

In that rule, the FAA amended its regulations to revise the training, qualification, certification, and operating requirements for pilots, flight instructors, ground instructors, and pilot schools.

This document corrects an error in the codified text of that document to permit a person serving as an examiner and administering a practical test for the issuance of a sport pilot certificate in a light-sport aircraft other than a glider or balloon to hold either a medical certificate or a U.S. driver's license. The FAA is also clarifying the regulatory text related to when an instrument proficiency check is required to act as pilot in command under IFR or in weather conditions less than the minimums prescribed for VFR. Finally, this document corrects one section of the final rule to clarify the FAA's original intent with regard to the use of flight simulation training devices for training and testing when seeking to add a type rating to an existing pilot certificate or obtain a type rating concurrently with a pilot certificate.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Jeffrey Smith, Airmen Certification and Training Branch, AFS-810, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 493-4789; e-mail to jeffrey.smith@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

On August 21, 2009, the FAA published a final rule entitled, “Pilot, Flight Instructor, and Pilot School Certification” (74 FR 42500). That final rule revised the training, qualification, certification, and operating requirements for pilots, flight instructors, ground instructors, and pilot schools. The FAA is now issuing a technical amendment to correct an error in § 61.23 and to clarify the original intent of § 61.64.

Discussion of Technical Amendment to § 61.23

As part of the 2009 final rule, the FAA revised § 61.23 to set forth the medical certification requirements for persons serving as examiners and administering practical tests. As modified in the final rule, the current text of that section requires an examiner administering a practical test in an aircraft, other than a glider or balloon, to hold at least a third-class medical certificate.

During the rulemaking process, the FAA received a comment stating that examiners administering practical tests to applicants for a sport pilot certificate should not be required to hold a medical certificate. These tests – particularly those conducted in powered parachutes and weight-shift-control aircraft – are frequently conducted by examiners who hold only a sport pilot certificate. A person exercising the privileges of a sport pilot certificate may hold either a

medical certificate or a U.S. driver's license to exercise those privileges. Although the preamble to the final rule acknowledged the comment, the regulatory text did not address the issue raised by the comment.

Although an examiner is generally not the pilot in command of an aircraft during a practical test, an examiner may, on occasion, need to act as pilot in command of an aircraft during the course of a practical test. Accordingly, the FAA believes that an examiner must meet the appropriate medical certification requirements to act as pilot in command of the aircraft in which the test is being conducted should the need arise. An examiner conducting a practical test for a sport pilot certificate in a light-sport aircraft other than a glider or balloon would therefore only need to hold either a medical certificate or a U.S. driver's license.

The technical amendment will revise § 61.23(c) to permit a person to serve as an examiner and administer a practical test for the issuance of a sport pilot certificate in a light-sport aircraft other than a glider or balloon if that person holds and possesses either a medical certificate issued under part 67 or a U.S. driver's license.

Discussion of Technical Amendment to § 61.57(d)

Section 61.57(c) sets forth the instrument recent flight experience requirements for a pilot to act as pilot in command under IFR or in weather conditions less than the minimums prescribed for VFR. Under that provision, a pilot must have performed and logged certain tasks and maneuvers within six calendar months preceding the month of the flight on which the pilot intends to serve as pilot in command. Section 61.57(d) sets forth the time when a pilot who does not meet the instrument recent experience requirements of paragraph (c) must accomplish an instrument proficiency check (IPC) before serving as pilot in command under IFR or in weather conditions less than the minimums prescribed for VFR.

In the 2009 final rule, the FAA modified the language in § 61.57(d) to remove confusing language (“within the prescribed time, or within 6 calendar months after the prescribed time”) and replaced it with language that a pilot must perform the instrument recent flight experience within a period of 12 months to avoid having to accomplish an IPC. The FAA acknowledges that the language as modified allows for interpretations inconsistent with the intent of the rule and contrary to the manner the rule has been historically applied.

In this technical amendment, the FAA is revising the language in paragraph (d) to clarify the intent of the rule. The revised language makes it clear that a pilot who has failed to maintain instrument currency for more than six calendar months may not serve as pilot in command under IFR or in weather conditions less than the minimums prescribed for VFR until completing an instrument proficiency check. A pilot whose instrument currency has been lapsed for less than six months may continue to reestablish instrument currency by performing the tasks and maneuvers required in paragraph (c).

Discussion of Technical Amendment to § 61.64

Prior to issuance of the 2009 final rule, 14 CFR § 61.63(e), (f), and (g) set forth the requirements for the use of flight simulators and flight training devices for a pilot seeking to add ratings to an existing pilot certificate other than the airline transport pilot certificate. Under former § 61.63(e), (f), and (g), any pilot who completed “all training and testing requirements” in a flight simulator for an additional rating on an existing pilot certificate other than an airline transport pilot certificate had to have specific flight experience (e.g., hold a type rating for a turbojet airplane of the same class of airplane for which the type rating is sought) to avoid having to fulfill a supervised operating experience requirement before acting as pilot in command of the aircraft for which the additional rating was sought.

The requirements for the use of flight simulators and flight training devices for obtaining an airline transport pilot certificate with a type rating or adding a type rating to an existing airline transport pilot certificate were covered by 14 CFR § 61.157(g), (h), and (i). Under former § 61.157(h), (i) and (j), any pilot who completed “all of the training and the required practical test” in a flight simulator for a type rating on an airline transport pilot certificate had to have the same prior flight experience listed in former § 61.63 to avoid having to fulfill a supervised operating experience requirement before acting as pilot in command in the aircraft for which the type rating was sought.

In 2007, the FAA proposed to consolidate the requirements of §§ 61.63(e), (f), and (g) and 61.157(g), (h), and (i) into new § 61.64 (72 FR 5806; February 7, 2007). In the preamble to the final rule, the FAA stated that in consolidating these sections “[n]o substantive changes had been made” (74 FR 42500 and 74 FR 42522). One commenter objected because, as consolidated in § 61.64, a pilot would be required to meet one of the experience prerequisites if any portion of the practical test for a type rating was completed in a flight simulator. The commenter noted that this requirement differed from the existing rule which required a pilot to meet one of the experience prerequisites only if he or she completed the entire practical test in a simulator. Two months after the final rule was published, the FAA issued a technical correction that made several changes to § 61.64. 74 FR 53643 (Oct. 20, 2009). The correction did not affect the language identified by the commenter that could be construed as requiring a pilot to meet one of the experience prerequisites if a simulator was used for any portion of the practical test.

Although the FAA stated in the 2009 final rule that no substantive changes were being made in consolidating the requirements in §§ 61.63 and 61.157, the language of the consolidation resulted in apparent changes to the requirements for using flight simulation

training devices (FSTD) to train and test for an additional rating on an existing pilot certificate. The consolidation of the two provisions into § 61.64 could be read to expand the number of pilots who would be subject to the supervised operating limitation because the regulatory text as written applies to a pilot who completes any training or testing in flight simulators to meet one of the listed experience requirements or receive a limitation. This result was not the FAA's intention in consolidating the provisions. The FAA, therefore, is modifying § 61.64 to reflect that a supervised operating limitation must be placed on a pilot certificate if the pilot applying for the rating uses a flight simulator for the entire practical test and fails to meet one of the listed flight experience requirements.

In making the changes to § 61.64, the FAA emphasizes that §§ 61.63 and 61.157 continue to set forth the training requirements for additional ratings and type ratings. Section 61.64 merely details the use of FSTD in training and testing for those ratings. We note that, if § 61.63 requires a pilot to meet the training requirements of another section, for example § 61.129 (commercial pilot), then the FSTD limitations set forth in § 61.129 will apply to that training and the pilot will not be able to train and test completely through simulation. In addition, pilots who train under the aeronautical experience requirements that limit the use of simulation for training (e.g., § 61.129; part 141 appendices) will continue to have the option of accomplishing a segmented practical test (see 14 CF.R. § 61.39(d); 14 CFR 61.45(a); and FAA Order 8900.1, Vol. 5, Chapter 1, Section 4).

This technical amendment also makes several clarifying changes to § 61.64, including (1) reinserting the language "except preflight inspection" to the provisions related to the requirement that the entire practical test take place in a Level C or higher flight simulator if an aircraft is not used, (2) modifying the language of the limitation, (3) rewording the language in paragraph (g)

related to the manner in which the supervised operating experience must be obtained, and (4) clarifying the language in paragraph (g) related to the means by which the supervised operating limitation may be removed from a pilot certificate. The FAA has also made a conforming change to the applicability provision in § 61.61.

List of Subjects in 14 CFR Part 61

Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Recreation and recreation areas, Reporting and recordkeeping requirements, Security measure and Teachers.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

2. Amend § 61.23 by revising paragraph (c) to read as follows:

§ 61.23 Medical Certificates: requirements and duration

* * * * *

(c) Operations requiring either a medical certificate or U.S. driver's license. (1) A person must hold and possess either a medical certificate issued under part 67 of this chapter or a U.S. driver's license when—

(i) Exercising the privileges of a student pilot certificate while seeking sport pilot privileges in a light-sport aircraft other than a glider or balloon;

(ii) Exercising the privileges of a sport pilot certificate in a light-sport aircraft other than a glider or balloon;

(iii) Exercising the privileges of a flight instructor certificate with a sport pilot rating while acting as pilot in command or serving as a required flight crewmember of a light-sport aircraft other than a glider or balloon; or

(iv) Serving as an Examiner and administering a practical test for the issuance of a sport pilot certificate in a light-sport aircraft other than a glider or balloon.

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3. Amend §61.57 by revising paragraph (d) introductory text to read as follows:

§ 61.57 Recent flight experience: Pilot in command

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(d) Instrument proficiency check. Except as provided in paragraph (e) of this section, a person who has failed to meet the instrument experience requirements of paragraph (c) for more than six calendar months may reestablish instrument currency only by completing an instrument proficiency check. The instrument proficiency check must consist of the areas of operation and instrument tasks required in the instrument rating practical test standards.

* * * * *

4. Revise §61.61 to read as follows:

§ 61.61 Applicability.

This subpart prescribes the requirements for the issuance of additional aircraft ratings after a pilot certificate is issued, issuance of a type rating concurrently with a pilot certificate, and the requirements for and limitations of pilot authorizations issued by the Administrator.

5. Revise § 61.64 to read as follows:

§ 61.64 Use of a flight simulator and flight training device.

(a) Use of a flight simulator or flight training device. If an applicant for a certificate or rating uses a flight simulator or flight training device for training or any portion of the practical test, the flight simulator and flight training device --

(1) Must represent the category, class, and type (if a type rating is applicable) for the rating sought; and

(2) Must be qualified and approved by the Administrator and used in accordance with an approved course of training under part 141 or part 142 of this chapter; or under part 121 or part 135 of this chapter, provided the applicant is a pilot employee of that air carrier operator.

(b) Except as provided in paragraph (f) of this section, if an airplane is not used during the practical test for a type rating for a turbojet airplane (except for preflight inspection), an applicant must accomplish the entire practical test in a Level C or higher flight simulator and the applicant must--

(1) Hold a type rating in a turbojet airplane of the same class of airplane for which the type rating is sought, and that type rating may not contain a supervised operating experience limitation;

(2) Have 1,000 hours of flight time in two different turbojet airplanes of the same class of airplane for which the type rating is sought;

(3) Have been appointed by the U.S. Armed Forces as pilot in command in a turbojet airplane of the same class of airplane for which the type rating is sought;

(4) Have 500 hours of flight time in the same type of airplane for which the type rating is sought;
or

(5) Have logged at least 2,000 hours of flight time, of which 500 hours were in turbine-powered airplanes of the same class of airplane for which the type rating is sought.

(c) Except as provided in paragraph (f) of this section, if an airplane is not used during the practical test for a type rating for a turbo-propeller airplane (except for preflight inspection), an applicant must accomplish the entire practical test in a Level C or higher flight simulator and the applicant must--

(1) Hold a type rating in a turbo-propeller airplane of the same class of airplane for which the type rating is sought, and that type rating may not contain a supervised operating experience limitation;

(2) Have 1,000 hours of flight time in two different turbo-propeller airplanes of the same class of airplane for which the type rating is sought;

(3) Have been appointed by the U.S. Armed Forces as pilot in command in a turbo-propeller airplane of the same class of airplane for which the type rating is sought;

(4) Have 500 hours of flight time in the same type of airplane for which the type rating is sought;
or

(5) Have logged at least 2,000 hours of flight time, of which 500 hours were in turbine-powered airplanes of the same class of airplane for which the type rating is sought.

(d) Except as provided in paragraph (f) of this section, if a helicopter is not used during the practical test for a type rating in a helicopter (except for preflight inspection), an applicant must accomplish the entire practical test in a Level C or higher flight simulator and the applicant must meet one of the following requirements--

- (1) Hold a type rating in a helicopter and that type rating may not contain the supervised operating experience limitation;
 - (2) Have been appointed by the U.S. Armed Forces as pilot in command of a helicopter;
 - (3) Have 500 hours of flight time in the type of helicopter; or
 - (4) Have 1,000 hours of flight time in two different types of helicopters.
- (e) Except as provided in paragraph (f) of this section, if a powered-lift is not used during the practical test for a type rating in a powered-lift (except for preflight inspection), an applicant must accomplish the entire practical test in a Level C or higher flight simulator and the applicant must meet one of the following requirements--
- (1) Hold a type rating in a powered-lift without a supervised operating experience limitation;
 - (2) Have been appointed by the U.S. Armed Forces as pilot in command of a powered-lift;
 - (3) Have 500 hours of flight time in the type of powered-lift for which the rating is sought; or
 - (4) Have 1,000 hours of flight time in two different types of powered-lifts.
- (f) If the applicant does not meet one of the experience requirements of paragraphs (b)(1) through (5), (c)(1) through (5), (d)(1) through (4) or (e)(1) through (4) of this section, as appropriate to the type rating sought, then--
- (1) The applicant must complete the following tasks on the practical test in an aircraft appropriate to category, class, and type for the rating sought: preflight inspection, normal takeoff, normal instrument landing system approach, missed approach, and normal landing; or
 - (2) The applicant's pilot certificate will be issued with a limitation that states: "The [name of the additional type rating] is subject to pilot in command limitations," and the applicant is restricted from serving as pilot in command in an aircraft of that type.

(g) The limitation described under paragraph (f)(2) of this section may be removed from the pilot certificate if the applicant complies with the following--

(1) Performs 25 hours of flight time in an aircraft of the category, class, and type for which the limitation applies under the direct observation of the pilot in command who holds a category, class, and type rating, without limitations, for the aircraft;

(2) Logs each flight and the pilot in command who observed the flight attests in writing to each flight;

(3) Obtains the flight time while performing the duties of pilot in command; and

(4) Presents evidence of the supervised operating experience to any Examiner or FAA Flight Standards District Office to have the limitation removed.

Issued in Washington, DC on December 6, 2011.

Pamela Hamilton-Powell,
Director, Office of Rulemaking

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